

Claimant alleges injury to her low back from her work drilling parts from March 2, 1998, through March 6, 1998. Claimant has history of two prior work-related low back injuries, one in March 1994 at Beech and a second in May 1996 at Gordon Piatt Energy Group. The record includes deposition testimony from three physicians, each providing opinions regarding the nature and extent of claimant's disability.

Dr. Frederick R. Smith, claimant's treating physician, testified claimant has no new impairment and does not require any new restrictions from the current injury. Her condition is the same as it was in 1995 when she was evaluated by Dr. Flutter. Dr. Pedro A. Murati, who testified on behalf of claimant, concluded claimant has a 10 percent permanent partial impairment of function and that 5 percent is new. When the parties were not able to agree as to the functional impairment, the ALJ appointed Dr. Phillip R. Mills to perform an independent medical examination. Dr. Mills opined that claimant has a 10 percent impairment but concluded that her impairment was not increased by the alleged current injury.

Relying on Drs. Smith and Mills, the ALJ found the claimant suffered only a temporary aggravation as a result of the events of March 2 through March 6, 1998, but no new permanent impairment. Claimant disputed the testimony of Dr. Smith because, according to claimant, Dr. Smith provided inconsistent testimony when comparing the MRI done before this injury and the MRI done after. Dr. Smith did, on examination by claimant's counsel, acknowledge that the report from the MRI done after this injury makes different findings. But Dr. Smith also indicated he did not consider the differences to be significant to his ultimate conclusion. In spite of those differences, he concluded claimant has no new impairment. Claimant also challenges the opinion of Dr. Mills. Claimant points out that Dr. Mills' 10 percent impairment rating is higher than the 6 percent rating given by Dr. Flutter before this injury. But the fact Dr. Mills' rating is higher must, in this context, be explained as a difference of opinion as to how the same impairment should be rated, not a difference in the opinion about the nature and extent of the injury itself. Dr. Mills, aware of this difference, nevertheless concluded claimant has no new impairment over that which Dr. Flutter found.

The Board agrees with and affirms the findings by the ALJ. The more persuasive medical testimony indicates claimant has no new injury as a result of the accident alleged in this claim.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark on July 22, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Wichita, KS
P. Kelly Donley, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director